Craig Williams Attorney at Law, P.L.L.C.
State Bar #014929
P.O. Box 26692
Prescott Valley, AZ 86312
TEL.: (928) 759-5572
FAX: (928) 759-5573
Email: craigwilliamslaw@gmail.com
Attorney for Defendant

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BY: V REISINGER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	**P1300CR201001325**
Plaintiff,	
vs.	**RESPONSE TO STATE'S 2012 MOTION IN LIMINE TO PRECLUDE EVIDENCE**
STEVEN DEMOCKER,	
Defendant.	**(Hon. Gary Donahoe)**

Defendant Steven DeMocker, by and through Counsel undersigned, hereby Responds to the state's February 13, 2012 "Motion in Limine to Preclude Evidence." This Response is made pursuant to the Defendant's Right to Due Process of Law and the Right to a fair trial per the 5th and 6th Amendments of the U.S. Constitution, § 2, Articles 3, 4 and 24 of the Arizona Constitution, and the Arizona Rules of Criminal Procedure, and the Defendant's noticed Defense of Third-Party Culpability.

1) Knapp's e-mails.

This second "new" 2012 Knapp Motion in Limine is essentially a re-tread of the state's three previous motions in limine regarding Mr. Knapp. As has become a habit, it is not a valid motion. To repeat, this Court already heard arguments regarding Mr. Knapp and ruled in the

Defendant's favor. The endless requests by the state to re-hear previously ruled-upon issues is a waste of time and resources on the eve of trial. Rule 16.1(d), Arizona Rules of Criminal Procedure, addresses how many trips to the well a party gets on pre-trial rulings:

> Finality of Pretrial Determinations. Except for good cause, or as otherwise provided by these rules, *an issue previously determined by the court shall not be reconsidered.*

(Id.)

The state is the party that found and disclosed Mr. Knapp's e-mails. First, Mr. Knapp is an unavailable witness, for dubious reasons. No one is disputing that Knapp wrote the e-mails in question. Second, the Knapp e-mails are not offered to prove the truth of the matter asserted, which is that Knapp may have killed Ms. Kennedy. No, the Knapp e-mails are offered as evidence that Knapp was a con man. Thus, the Knapp e-mails are not exclude-able hearsay.

Mr. Knapp used a wide variety of cons to get money, lodging, transportation, etc., out of friends and relatives. Knapp routinely lied about the extent of his cancer, in order to gain favors. Knapp told a business contact that as soon as Carol Kennedy (the victim in this case) was divorced that she was going to invest in a business franchise for him, and led this business contact to believe that he and Ms. Kennedy were boyfriend and girlfriend. Only, Ms. Kennedy never considered Mr. Knapp her boyfriend.

Contrary to the state's assertion, the evidence in this case of Knapp's involvement in the two check schemes will correctly to portray him as deceptive and manipulative, and desperate for money: in other words, a con man.

The previous Defense team said the following on the subject:

> In essence, this latest attempt to keep Mr. Knapp out of this case is a motion aimed at whether enough evidence exists to allow Mr. DeMocker to point to Mr. Knapp as a possible killer. Based upon a defense interview of the State's own cell tower expert just conducted on April 23, 2010, and the depositions of Mr. Knapp's former wife and his young son taken on April 21, a scenario has developed in

> which Mr. Knapp would have had an opportunity to kill Carol Kennedy and cover his tracks with the alibi evidence previously submitted. In short, a circumstantial case can be demonstrated, no weaker than that offered against Mr. DeMocker, that Knapp was the real killer who concocted an elaborate alibi to attempt to hide his guilt. That case is based upon a time-line that would allow Mr. Knapp to leave his son alone just long enough to go to Bridle path, kill Carol, check his voice mail on the way back, and return to his former wife's home just before she arrived.

(Response to State's Motion in Limine to Preclude Knapp Evidence, April 26, 2010, in P1300CR20081339, pg. 2).

Knapp lived a 200 or so feet from Ms. Kennedy, in her guesthouse. Knapp was conveniently *the first person on the scene* on the night of the murder, showing up shortly after the arrival of law enforcement. Knapp immediately pointed the finger at the Defendant. It was at those first moments in this case -- and no later -- that Knapp was "ruled out" as a suspect in the murder. Despite being a glaringly obvious "person of interest" in the murder of Carol Kennedy, no alibi was really needed for Knapp, because no serious investigation was ever done on Knapp. No serious interrogation was ever done on Knapp.

To the contrary. Knapp was the "tour guide" for law enforcement through Ms. Kennedy's house. Knapp had keys to the house. No law enforcement testing of Knapp's clothes, truck, washing machine, shoes, bike, or person was ever done. Knapp had a serious enough drug problem that he was not allowed to drive his children around nor have them spend the night with him, yet no serious questioning by the state about Knapp's drug use ever happened.

Why? Because no one but the Defendant was ever considered a suspect.

Then under really suspicious circumstances, Mr. Knapp was killed just six months after Ms. Kennedy. The *same medical examiner in this case* -- Dr. Keen -- arrived on the scene of Knapp's death 14 or so hours after the investigation into Knapp's death, and declared that it was a suicide. The investigation of Knapp's death went so far as to intentionally *not test for gun shot residue* to determine whether Knapp actually shot himself. Only in this case would such a rush

to judgment pass muster with law enforcement investigators and prosecutors.

In State v. Gibson, 202 Ariz. 321(2002), the Arizona Supreme Court found a low burden to present third party culpability:

> The proper focus in determining relevancy is the effect the evidence has upon the defendant's culpability. To be relevant, the evidence need only tend to create a reasonable doubt as to the defendant's guilt.

Third party culpability in this case is vital to the Defense. The state's case against the Defendant is weak and circumstantial. The state cannot place the Defendant at the scene of the crime: no DNA, no blood, no fingerprints or other biological evidence, and no confession. Importantly, these facts will never change – no new evidence will surface that could place the Defendant at the scene of the crime – because he was not there and did not murder Carol Kennedy.

Knapp, however, can be placed at the scene of the crime -- by his fingerprint, which was on a document dated the same day as Ms. Kennedy's murder. That document was sitting on the kitchen counter near where Ms. Kennedy was preparing a salad on the night of her murder.

That Knapp is a viable candidate for third party culpability cannot be seriously in debate, which is why the state does not want the jury to hear evidence about Knapp's nefarious money dealings. There is *ample* evidence of Knapp's mental state, his addiction to prescription drugs, and his desperate search for money, his scams and failed relationships in the months leading up to Carol's death. This included Knapp demanding money from the Defendant's daughters in order to move out of the Bridal Path residence following Ms. Kennedy's death.

To put it more bluntly, Knapp was, and remains a much more solid suspect in the death of Carol Kennedy.

2) The Sorenson Bike Evidence.

At a recent interview with a DPS DNA "expert," she confirmed that the Defendant's DNA was not found on anything incriminating, nor was Ms. Kennedy's DNA found anywhere on any of the Defendant's belongings -- including the bike. Why do we need to talk about a bike? Only to reveal that there was dubious circumstances surrounding the *way Sorenson and the state arranged for the bike to be tested.*

Conclusion:

For the above stated reasons, all of the Knapp evidence must be allowed. The state's 2012 Knapp Motion should be denied. The testing method of the bike should be admissible. Finally, as interviews are ongoing, new witnesses and areas of research are revealed. The state's complaint as to Rule 15.2 is without foundation.

RESPECTFULLY SUBMITTED this March 7, 2012.

Craig Williams
Attorney at Law

A copy of the foregoing delivered to:
Hon. Gary Donahoe, Division One,
Jeff Paupore, Steve Young, Yavapai County Attorney's Office
The Defendant
Greg Parzych, via e-mailed .pdf
by: _____